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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,238	12/05/2001	Lawrence A. Shimp	525400-208	8543
7590 07/16/2004			EXAMINER	
William Squire, Esq. c/o Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein 6 Becker Farm Road Roseland, NJ 07068			WILLSE, DAVID H	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 07/16/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/005,238

Applicant(s)

SHIMP ET AL.

Examiner

Dave Willse

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED July 1, 2004, FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☒ The proposed amendment(s) will not be entered because:  
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Attention is directed to the attached page.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☒ Newly proposed or amended claim(s) 60-63 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-10, 12-14, 18-20, 22, 23, 25-29, 33, 60-63, 72, 73, 80, 86, 87, 114-116 and 127.

Claim(s) withdrawn from consideration: 11, 15-17, 21, 24, 30-32, 34-59, 64-71, 74-79, 81-85, 88-113, 117-126, 128-138.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

  
Dave Willse  
Primary Examiner  
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Claims 1-10, 12-14, 18-20, 22, 23, 25-29, and 33 will be allowable if the Applicant agrees to the following (or similar) revisions:

In claim 1, line 3,     --spinal fusion implant-- inserted after “first”, first occurrence;  
                    on line 4,     “central longitudinal first” replaced by --first central longitudinal--;  
                    on line 6,     --spinal fusion implant-- inserted after “second”, first occurrence.

In claim 7, last line,     “compression” replaced by --compressive--.

In claim 25, line 2,     --having first and second sections-- inserted after “pin”, first occurrence.

The recommended insertions pertaining to the “spinal fusion implant” are believed to be supported in the Applicant’s specification at paragraphs **0066** and **0132** and elsewhere and are deemed to be necessary since otherwise, in the examiner’s view, the body of proposed claim 1 is a self-contained description of the structure and does not depend on the preamble for completeness (*Kropa v. Robie*, 88 USPQ 480-481; *Rowe*, 42 USPQ2d 1553; *IMS Technology Inc. v. Haas Automation Inc.*, 54 USPQ2d 1129, 1137 (Fed. Cir. 2000)), especially because the body is devoid of any reference to spinal implants. Therefore, said recommended insertions would serve to patentably distinguish over prior art such as US 6,139,211 (previously cited by the examiner), in which the embodiment shown in Figure 8, for example, comprises an offset distance **D’** and, because of the engagement of the teeth **152a** and **152b**, a first bracket component **128** under compression, a second bracket component **130** under tension, and a

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tapered bolt **134** under tension and compression (column 7, line 58 et seq.). The examiner may be open to alternative suggestions by the Applicant.

The other revisions are necessary in order to correct minor informalities. For example, the recommended change to claim 25 would provide proper antecedent basis for the limitations in claim 26.

The Applicant may telephone the examiner to request an examiner's amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is (703) 308-2903. The examiner can normally be reached Monday through Thursday and often on Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



**Dave Willse**  
**Primary Examiner**  
**Art Unit 3738**